

## Nuclear Regulatory Commission

## §2.1117

either to support or to refute the existence of a genuine and substantial dispute of fact. Each party shall also submit all supporting facts and data in the form of sworn written testimony or other sworn written submission. Each party's written summary and supporting information shall be simultaneously served on all other parties to the proceeding.

(b) Only facts and data in the form of sworn written testimony or other sworn written submission may be relied on by the parties during oral argument, and the presiding officer shall consider those facts and data only if they are submitted in that form.

### §2.1115 Designation of issues for adjudicatory hearing.

(a) After due consideration of the oral presentation and the written facts and data submitted by the parties and relied on at the oral argument, the presiding officer shall promptly by written order:

(1) Designate any disputed issues of fact, together with any remaining issues of law, for resolution in an adjudicatory hearing; and

(2) Dispose of any issues of law or fact not designated for resolution in an adjudicatory hearing.

With regard to each issue designated for resolution in an adjudicatory hearing, the presiding officer shall identify the specific facts that are in genuine and substantial dispute, the reason why the decision of the Commission is likely to depend on the resolution of that dispute, and the reason why an adjudicatory hearing is likely to resolve the dispute. With regard to issues not designated for resolution in an adjudicatory hearing, the presiding officer shall include a brief statement of the reasons for the disposition. If the presiding officer finds that there are no disputed issues of fact or law requiring resolution in an adjudicatory hearing, the presiding officer shall also dismiss the proceeding.

(b) No issue of law or fact shall be designated for resolution in an adjudicatory hearing unless the presiding officer determines that:

(1) There is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the

introduction of evidence in an adjudicatory hearing; and

(2) The decision of the Commission is likely to depend in whole or in part on the resolution of that dispute.

(c) In making a determination under paragraph (b) of this section, the presiding officer shall not consider:

(1) Any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at the site, or any civilian nuclear power reactor for which a construction permit has been granted at the site, unless the presiding officer determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which a license application, authorization, or amendment to expand the spent nuclear fuel storage capacity is being considered; or

(2) Any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at that site, unless (i) such issue results from any revision of siting or design criteria by the Commission following such decision; and (ii) the presiding officer determines that such issue substantially affects the design, construction, or operation of the facility or activity for which a license application, authorization, or amendment to expand the spent nuclear fuel storage capacity is being considered.

(d) The provisions of paragraph (c) of this section shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations applied for under the Atomic Energy Act of 1954, as amended, before December 31, 2005.

(e) Unless the presiding officer disposes of all issues and dismisses the proceeding, appeals from the presiding officer's order disposing of issues and designating one or more issues for resolution in an adjudicatory hearing are interlocutory and must await the end of the proceeding.

[50 FR 41671, Oct. 15, 1985; 50 FR 45398, Oct. 31, 1985]

### §2.1117 Applicability of other sections.

In proceedings subject to this subpart, the provisions of subparts A and

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G of 10 CFR part 2 are also applicable, except where inconsistent with the provisions of this subpart.

### **Subpart L—Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings**

SOURCE: 54 FR 8276, Feb. 28, 1989, unless otherwise noted.

#### **§ 2.1201 Scope of subpart.**

(a) The general rules of this subpart govern procedure in any adjudication initiated by a request for a hearing in a proceeding for—

(1) The grant, renewal or licensee-initiated amendment of a materials license subject to parts 30, 32 through 35, 39, 40, or 70 of this chapter, with the exception of a license amendment related to an application to transfer a license; or

(2) The grant, renewal, or licensee-initiated amendment of an operator or senior operator license subject to part 55 of this chapter.

(3) The amendment of a part 50 license following permanent removal of fuel from the part 50 facility to an authorized facility for licensees that have previously made declarations related to permanent cessation of operations and permanent removal of fuel from the reactor in accordance with § 50.82(a)(1). Subpart L hearings for the license termination plan amendment, if conducted, must be completed before license termination.

(4) The amendment of a Part 50 license to release part of a power reactor facility or site for unrestricted use in accordance with § 50.83. Subpart L hearings for the partial site release plan, if conducted, must be complete before the property is released for use.

(b) Any adjudication regarding, (1) a materials license subject to parts 30, 32 through 35, 39, 40, or 70, or an operator or senior operator license subject to part 55 that is initiated by a notice of hearing issued under § 2.104, or (2) a notice of proposed action under § 2.105, or a request for hearing under subpart B of 10 CFR part 2 on an order or a civil penalty, is to be conducted in accord-

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ance with the procedures set forth in subpart G of 10 CFR part 2.

[57 FR 4153, Feb. 4, 1992, as amended at 61 FR 39297, July 29, 1996; 63 FR 66730, Dec. 3, 1998; 68 FR 19726, Apr. 22, 2003]

#### **§ 2.1203 Docket; filing; service.**

(a) The Secretary shall maintain a docket for each adjudication subject to this subpart, commencing with the filing of a request for a hearing. All papers, including any request for a hearing, petition for leave to intervene, correspondence, exhibits, decisions, and orders, submitted or issued in the proceeding; the hearing file compiled in accordance with § 2.1231; and the transcripts of any oral presentations or oral questioning made in accordance with § 2.1235 or in connection with any appeal under this subpart must be filed with the Office of the Secretary and must be included in the docket. The public availability of official records relating to the proceeding is governed by § 2.790.

(b) Documents are filed with the Office of the Secretary in adjudications subject to this subpart either—

(1)(i) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) By mail, telegram or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

(2) Filing by mail, telegram or facsimile is complete as of the time of deposit in the mail, with the telegraph company, or upon facsimile transmission. Filing by other means is complete as of the time of delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary.

(c) Each document submitted for filing in an adjudication subject to this part, other than an exhibit, must be legibly typed, must bear the docket number and the title of the proceeding, and, if it is the first document filed by that participant, must designate the name and address of a person upon whom service can be made. The document also must be signed in accordance with § 2.708(c). A document, other than correspondence, must be filed in an